

362  
381  
January 22, 1747.

# INFORMATION

FOR THE

MAGISTRATES of *Perth*, Pursuers ;

AGAINST

My Lady *Gray*, and her Husband Lord *Gray*,  
Defenders.

**K**ING *Robert II.* by his Charter, of this Date, granted July 23,  
ed " to the Provost, Burgesse, and Community 1375.  
" of the *Burgh of Perth*, the foresaid Burgh, cum  
" *insulis nostris jacentibus infra aquam de Tay, viz. lie*  
" *Labbe de Incheret, Incharay, & Sleples; & cum omnibus pis-*  
" *cariis nostris ad illas insulas pertinentibus, circumquaque, ex om-*  
" *ni parte, & utrobique, ac qualitercunque adjacentibus, & adja-*  
" *cere quomodolibet valentibus, in futurum; cum piscatura unius*  
" *retis insule Regie; & cum omnibus aliis piscariis nostris, insula-*  
" *rum dicti burgi.*"

This Charter, and many other Charters both prior and posterior, granted by the Kings of *Scotland* to the said Burgh of *Perth*, are particularly recited, and confirmed by a Charter of this Date, granted by King *James VI.* and the Town was upon Nov. 15,  
this last Charter infest. 1600.

Pursuant to those Rights, the Town hath uniformly possessed all the Salmon-fishings thereby granted; and particularly the Fishings on the River of *Tay*, adjacent to and around the *Island of Sleples*, (the Subject of the present Question) without any Interruption, and without any Claim made by the

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Heritors

Heritors of the Lands, on either Side of the River, adjacent to this Island, either by the Earl of *Wemyss*, who has the Lands of *Elcho* on the South, or by the Heritor of *Kinfauns*, whose Lands are on the North Side of the River, opposite to this Island. The Town and their Tacksmen fished all around the Island, according as the Water was in *Ply*; and there was no Fishing but the Town's on that Part of the River; none by the Earl of *Wemyss* or his Tenants on the South, nor by the Tenants of *Kinfauns* on the North.

About the Year 1741, a Tenant of my Lady *Gray's*, in the *Kirktown* of *Kinfauns*, set about clearing the Shallows upon the North-bank of the River, opposite to the Middle of the Island of *Sleples*; and, after he had removed some Stones, which rendered the drawing of a Net on that Side impracticable before, he set up a Fishing on that Part of the River that had constantly been fished by the Town's Fishers; whereby they were in hazard of being deprived of one half of that Fishing. Thereupon the Town made Interruption; and, after several unsuccessful Attempts to settle this Matter by Communings and Submissions, they have now brought a Declarator for ascertaining their Right of Fishing on this Part of the River, adjacent to the Island of *Sleples*, exclusive of the Lady *Gray* and her Tenants.

The Cause came by course of the Roll before the Lord *Elchies*. He has taken the Debate to report, and he directed Informations to be given in. This is humbly offered in Behalf of the Town of *Perth*, the Pursuer.

And, in order to make the Question the more intelligible, it was observed for the Pursuers, in the Entry, *imo*, That as the *Tide* flows in this Part of the River, and for many Miles above it, so there is no Fishing in this, or in any of the neighbouring Fishings, either at *full Sea* or at *low Water*. The Fishing is carried on during a Part of the Time of the *Flowing* and of the *Ebbing* of the *Tide*. And, for that Reason, the *Breadth* of the River, in the present Question, is not to be considered

as it is at *full Sea*, or at *low Water*; but as it is when the Fishers can work, during Part of the Time of the Ebbing and Flowing.

2do, That the Fishers, in making their *Shot*, though they stretch from the one Bank to the other, yet their Nets are so framed, that they only extend over the Water of *certain Depth*. The rest of the Water is made out by the *Head-rope* and the *Hand-rope*, which are longer or shorter, according to the Extents of the Shallows of the Water, which are not of sufficient Depth to admit of the Net.

And, 3tio, that as the Salmon commonly swim in the Depth of the River, and are rarely to be found any where else, therefore there is no such Thing as fishing on this River where the Net does not compass and take in the whole Depth of the River. Though the Net is drawn upon the Shallows upon the Side of the River, yet no Fishes are to be caught, unless the Net has in its Course taken in the whole Depth of the River: That where the River has but one Channel, there can be but one Fishing in the same Longitude of the River.

And 4to, that one Fishing is fished by *two Boats* and *two Nets*. While the one is a-drawing, the other Boat is drawing up, and preparing for the next Shot; which commences when the other Net is brought to Land. And in this there is no Difference, whether the whole belongs to one Proprietor, and is fished of one Side of the River; or if it belongs to two, or is fished on both Sides of the River, two Boats and two Nets are necessary; and no more can be employed in one Fishing on this River.

In the *next* place, It was observed for the Pursuers, that the Charter of *Robert II.* did convey to them the Island of *Sleples*, with the Fishings adjacent to that Island, all around the Island, on every Side: That the Town had thereby Right to fish the River, and every Part of it adjacent to that Island, where and when such Fishing was practicable by the Condition of the River: That, in consequence of this Grant, the Town has Right to fish the River, as on the *South* and the *North* Side of  
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the Island, so upon the *West* and upper End of the Island, so upon the *East* and lower End of the same. And though, at present, the *main Branch* of the River runs to the Northward of this Island, and, for that Reason, the Town's Possession is chiefly on the North, East, and West Sides of the Island, according to the *Condition* or *Ply* of the Water, where the Lands of *Kinfauns* are washed by the River; yet as it cannot be affirmed with Certainty, that, at the Date of King *Robert's* Charter, and afterwards, the *main Branch of the River* did not run to the *South* of the Island, between it and the Lands of *Elcho*, and that the Town's Fishing was then on that Side; so it is very possible, that, in time coming, the River may change its present Course, from the *North* of the Island to the *South Side*. And such Alterations, that may have happened in times past, or may happen in times to come, will not vary or diminish their Right. Their Grant from the Crown intitles them to the Fishing of the River, all around the Island; and that whole and entire, as it was in the Crown at the Date of the Grant. The Words of the Grant are as extensive as can well be devised, *cum omnibus piscariis nostris ad illas insulas pertinentibus, circumquaque, ex omni parte, & utrobique, ac qualitercunque adjacentibus, & adjacere quomodolibet valentibus in futurum*; without any Reservation in favours of the Crown, or Exception of any Fishing that was or might afterward be adjacent to the Island, in favours of any third Party.

And the Pursuers Possession hath immemorially been as extensive as their Grant. They have possessed no less than three different Fishings on the North-side of this Island; one at the upper and West End of the Island, a second about the Middle, and a third at the East End. On the *South-side* there have been no regular Fishing, because that Branch is *shallow*; the Fishes do not swim that way. And this must presume Possession in the same extensive Manner backward to the Date of their Charter; that is for near 400 Years. And, during all that Period, at least 'till the 1741, they had no Competitor; no  
Person

Person claiming any Share or Interest in any of the Fishings adjacent to the Island.

Wherefore, as the Crown was fully divested of all the Fishings on this Part of the River, in favours of the Pursuers, any after Grant of the same Fishing, or of any Part thereof, in favours of the Lady Gray, her Predecessors or Authors, was void, and could carry nothing. Whether such Grant followed by 40 Years uninterrupted Possession, might not have constitute a Right exclusive, or in common with the Pursuers, is a Question immaterial in the present Case; since it is admitted and agreed between the Parties, that the Defender and her Predecessors and Authors have had no Possession of the Fishing they now claim more early than the 1741; and which Possession was disturbed as early as it commenced *via facti*. It was stopt for some time by Communings, and a Submission proposed, and immediately thereafter was challenged by this Action.

After what has been said, it may appear immaterial to enquire into the Defenders Rights to this new invented and new named Fishing of *Py Road*, opposite to the Middle of the Town's Island; seeing, as the Defenders Title produced is no older than the 1672, it is plain, that, though it were never so express, it could give no Right, as the Crown was *ab ante* denuded in favours of the Town of *Perth*. But, as the Defenders insist on their Right, the Pursuers must here follow the Defenders..

And, on this Point, the Pursuers must observe, that the Defender pleads, if not *inconsistently*, at least with great *Uncertainty*: For the Defender's Charter contains two Baronies on the North-side of the River. The Defenders claim the Fishing under both Baronies; *first*, under the Grant of the Barony of *Craigtoun*, comprehending certain Lands, *with the Fishings of the same Lands, called Pilgarthugh, Cambuspool, and Crook, with all other Fishings, as well Salmon as white Fishes, in the said Water of Tay, which of old belonged to the Abbots of Scone, betwixt the Wood-dike of Kinnoul and the Limits or Bounds of Little-*  

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Seggiden,

Seggiden, in all Parts within the said Lands of Craigtoun. Under this Clause the Defender claims this new Py Road Fishing. It lies locally between the *Wood-dike of Kimmoul*, which lies about a Mile or so up the Water, and the *March of Seggiden*, about as far down the River. But, unluckily for the Defenders, this won't answer the Description in the Charter: For, 1<sup>st</sup>, it cannot be said, with any Congruity, that this *new Fishing*, that is confessed to be of no older Date than the 1741, belonged to the Abbot of *Scone*, who has had no Existence in *Scotland* for near two hundred Years past.

And, 2<sup>dly</sup>, this is not all: For the Fishings mentioned in this Clause, are limited to those *lying within the said Lands of Craigtoun*. And it is certain, and admitted, that this new Fishing does not lie within the Lands of *Craigtoun*; but within the separate Barony, that of *Kinfauns*.

This made the Defenders resort to another Title, namely, their Right to the *Barony of Kinfauns*, where the Lands are granted with the *Fishing of Salmon, and other Fishings in the Water of Tay*. But, with Submission, neither will this answer their *new Py Road Fishing*: For though such a general Clause may carry a Salmon-fishing, if there be any such in the Barony at the Date of such Grant, or may be a Title of Prescription of a Fishing carried on for forty Years pursuant to such a Grant; but nether of these will apply to the present new Fishing. It was no Fishing before the 1672, the Date of the Charter: And no Possession that can be available has been had of this Fishing since it was made a Fishing in the 1741, *opere manufacto*.

It was objected in behalf of the Defenders, That the Pursuers had no Interest to object to this new Fishing; for that the Pursuers had full Possession of their Fishing, as it was possessed before the 1741, without being in the least incroached upon, or hindered by the new Fishing, which was made out of a Part of the Water that was impracticable before, by reason of great Stones in the Channel; and that the new Fishing was confined



to this new Ground: And for this they appealed to a Map produced by the Defenders.

It is answered, That the Objection is founded in every Part upon Mistakes in Fact: And the Map, in this Particular, appears to have been made on Purpose to mislead. And, 1<sup>st</sup>, it is a Mistake, that the Stones were removed out of the *Depth* of the River, where the Fishes swim, or where the Fishes were caught formerly and now, by the Pursuers Fishers. That Ground was clean formerly, or otherwise the Pursuers would have made nothing of their Fishing; and the Stones were removed from the Shallows on the North-side of the River only, and which formerly barred the drawing the Nets on that Side, and made the Fishing impracticable from thence: But there was no Impediment to the Fishing from the *Island*.

And, 2<sup>dly</sup>, it is a wilful Mistake, that this new Fishing is distinct from the Town's Fishing. If it is carried on, as both must fish the *Depth* of the River, it is impossible but that, if they fish at the same time, their Nets must interfere; and therefore, if the Defenders should be allowed to fish, they behoved to fish by turns; as is done every where on this River where the Heritors on both Sides have a Right to fish on the same Place of the River: And therefore, the Pursuers Fishing, which they hitherto enjoyed and possessed whole and entire, by two Boats and two Nets, behoved to be reduced to one half. It would but admit of one Boat and of one Net; which, with a Boat and a Net in the new Fishing, would fish the whole.

There is also a *third* Mistake in this Objection. It is supposed, that the Pursuer's Fishing from the Island did not intitle them to fish beyond the Middle of the Water; which is false. They have a Right to fish the whole River in this Part, to carry their Net close to the North-shore. And your Lordships will observe, that even by the Defenders Map, this was their Practice in the upper Shot, where the Shore would admit of it: And, as a Consequence of this, they are advised they had a Right

Right to have cleared the Shallows on *Kinfauns's* Side, of any Stones or Rubbish that incumbered their Fishing, had they believed that this would have proved beneficial: And therefore, when the Rubbish is removed by *Kinfauns's* Tenants, or by any other Accident, they are intitled to the Benefits thence arising; so far is this from depriving them of their Right.

It was further objected, That, in the *upper Shot* from the Island, the Fishers on *Kinfauns's* Side on the *Hempsdam Fishing*, were in use to interfere with the Town's Fishers, in the same Manner that the new Fishing interferes with the other Fishing belonging to the Town; as appeared by the Map.

But this, again, was intended to mislead: For the Fact is, that could not be controverted, that the Fishers of *Hempsdam* did never once pretend to fish in the Pursuers *Lead*, while they were fishing on the upper Part of the Island.. The Town constantly fished that whole Fishing by two Nets and two Boats: And it was *only* when the Water was not in ply for the Town's Fishers, when they could not fish at all in that Part, in the Time of Speats, that *Kinfauns's* Fishers, and that but very rarely, extended their Shot beyond their usual Bounds; which, as it was no Diminution of the Town's Right, nor Extension of the Right of the *Hempsdam Fishers*, so it can afford no Argument for the Extension claimed in behalf of this new Fishing..

*In respect whereof, &c..*

ROB. CRAIGIE..